

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that JWFC received apparent excessive contributions from 29 individuals totaling \$92,325. These errors occurred as a result of JWFC not resolving the excessive portions of contributions by forwarding a presumptive letter to the contributor or issuing a refund in a timely manner. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC provided letters sent to contributors for contributions totaling \$60,125 that were eligible for presumptive redesignation/retribution. The Audit staff considers the \$60,125 as excessive contributions that have been resolved untimely. JWFC did not address the excessive contributions resolvable only by refund to contributors or the U.S. Treasury totaling \$21,200 nor did it file amended reports to disclose these contributions on Schedule D (Debts and Obligations).

The Commission approved a finding that JWFC received excessive contributions totaling \$92,325.

Legal Standard

- A. Authorized Committee Limits.** For the 2012 election, an authorized committee may not receive more than a total of \$2,500 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §30116(a)(1)(A) and (f) (formerly 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f)); 11 CFR §§110.1(a) and (b) and 110.9(a).
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a retribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of retribution and redesignation); and
 - If the committee does not receive a proper retribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- C. Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing). A joint

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contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(B).

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;

- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 29 individuals with apparent excessive contributions totaling \$92,325.

JWFC resolved \$11,000 of the excessive contributions by sending presumptive reattributions and/or redesignations letters that were untimely. An additional excessive total of \$60,125 could still be resolved, albeit untimely, via presumptive reattribution or redesignation letters being sent to the contributors. The remaining excessive contributions totaling \$21,200 appear resolvable only by refund to the contributors or disgorgement to the U.S. Treasury.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff informed the JWFC representative of this matter at the exit conference. The Audit staff provided schedules of the apparent excessive contributions along with the necessary actions to resolve them. The representative stated that she planned to review all excessive contributions and obtain the necessary documents. She also mentioned that she would contact the JWFC employees to inquire about the records and reasons the excessive contributions occurred.

Subsequent to the exit conference, the JWFC representative informed the Audit staff that, upon the receipt of the Interim Audit Report, the excessive contributions resolvable only by refund to the contributors (\$21,200) would be disclosed on JWFC's Schedule D (Debts and Obligations) since JWFC has no funds available to make such refunds. In addition, the JWFC representative provided a list of contributors, along with their addresses, to whom presumptive reattribution or redesignation letters were going to be sent.

The Interim Audit Report recommended that JWFC provide evidence that demonstrated that the contributions totaling \$92,325 were not excessive or that they were timely resolved. Absent such evidence, JWFC should have resolved these apparent excessive contributions by either (1) sending notices for those contributions that were eligible for presumptive redesignation/reattribution letters, informing contributors about how the excessive portion of their contributions was resolved and offering a refund, (2) refunding the excessive portion of each contribution that was not eligible for presumptive redesignation/reattribution letters or making a payment to the U.S. Treasury and providing documentation or, (3) disclosing the

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contributions requiring refund on Schedule D if funds were not available to make the necessary refunds.

C. Committee Response to the Interim Audit Report

JWFC did not submit a response to the Interim Audit Report, nor were amended reports filed. The Audit staff made several attempts to contact the JWFC representative but was unsuccessful.

D. Draft Final Audit Report

The Draft Final Audit Report reiterated that JWFC received apparent excessive contributions totaling \$92,325. Of this amount, JWFC resolved \$11,000 previously by sending presumptive reattributions and/or redesignations letters that were untimely. Additional excessive contributions totaling \$60,125 could still be resolved in a similar manner, albeit untimely. The remaining excessive contributions totaling \$21,200 appear resolvable only by refund to the contributors or disgorgement to the U.S. Treasury.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, JWFC stated that, according to its established procedures, it submitted presumptive reattribution/redesignation letters to donors within one week of receipt of their contributions. Based on these procedures, JWFC presented letters previously sent to 29 contributors. However, these letters were not dated and JWFC was not able to locate the exact dates of submission to each contributor. In response to the Draft Final Audit Report, JWFC re-issued these letters on August 1, 2014, obtained contributors' signatures, as necessary, and untimely resolved excessive contributions totaling \$60,125. JWFC did not address the excessive contributions resolvable only by refund to contributors or the disgorgement to the U.S. Treasury totaling \$21,200, nor did JWFC file amended reports to disclose these contributions on Schedule D (Debts and Obligations).

Commission Conclusion

On November 6, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that JWFC received excessive contributions totaling \$92,325.¹

The Commission approved the Audit staff's recommendation.

¹ This amount consists of excessive contributions resolved untimely (\$71,125) and excessive contributions resolvable only by a refund to contributors or disgorgement to the U.S. Treasury (\$21,200). $\$92,325 = \$71,125 + \$21,200$.